IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WP(C).No. 628 of 2005(Y)

CMA.10/2003 of SUB COURT,THODUPUZHA

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PETITIONERS:

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1. P.N.KRISHNAN NAIR, S/O.NARAYANAN,
   SREE SADANAM, MUNDAKALLU P.O.,
   THODUPUZHA.

2. RAJESH KRISHNAN, S/O.KRISHNAN NAIR,
   SREE SADANAM, MUNDAKALLU P.O.,
   THODUPUZHA.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SRI.HARISH R. MENON

RESPONDENTS:

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1. BENNY, S/O.JOSEPH,
   PULIYANAL HOUSE, MUNDEKALLU P.O.,
   THODUPUZHA.

2. JOSE S/O. PHILIP, PULIYANAL HOUSE,
   MUNDEKALLU P.O., THODUPUZHA,
   NOW WORKING IN YONKERALA, NEW YORK, U.S.A.,
   REPRESENTED BY POWER OF ATTORNEY,
   BENNY S/O.JOSEPH, THE FIRST RESPONDENT HEREIN.

R1 BY ADV. SRI.GEORGE THOMAS (MEVADA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.628/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF ORDER OF MUNSIFF, THODUPUZHA DT.3.6.03 IN I.A.2367/02 IN O.S.398/02 FILED BY RESPONDENTS.

EXT.P2 – TRUE COPY OF JUDGMENT OF SUB COURT, THODUPUZHA, DT.3.8.04 IN CMA.10/03 FILED BY DO.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.628 OF 2005

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DATED THIS THE 20TH JUNE, 2007

J U D G M E N T

Ext.P1 order of injunction passed by the learned Munsiff and Ext.P2 judgment of the appellate court modifying Ext.P1 order and permitting the respondents to use the pathway in question for taking their lorries are under challenge in this Writ Petition filed by the defendants under Article 227 of the Constitution.

2. Sri.S.V.Balakrishna Iyer, Senior Counsel appearing for the petitioners and Sri.George Thomas Mevada, counsel for the 1st respondent have addressed me very elaborately.

3. Having considered the rival submissions made at the Bar, I am unable to agree with the learned Senior Counsel that Ext.P1 and for that matter Ext.P2 are vitiated to such an extent as to warrant interference by this Court in the supervisory jurisdiction of this Court. Mr.Balakrishna Iyer gave more thrust in his submission to that part of Ext.P2 which permits the respondents to carry their lorries through the pathway in question. According to Senior Counsel, if lorries are permitted to be taken through the pathway in question, the oruva kayyala belonging to the petitioners will be destroyed. I notice that while admitting this Writ Petition, this Court has granted stay of

Ext.P2. The above stay is in currency even now.

4. Under the above circumstances, I dispose of the Writ Petition directing the Munsiff's Court, Thodupuzha to special list the suit O.S.No.398 of 2002 in the earliest available special list, and try and dispose of the suit at the earliest and at any rate within three months of receiving copy of this judgment. The parties will maintain status quo as found by the courts below, till the suit is disposed of. However, considering the grievance of the petitioners that there is a possibility of the oruva kayyala being destroyed due to movement of lorries through the pathway in question, there will be a further direction that Ext.P2 to the extent it permits taking of lorries through the pathway in question will continue to be stayed till such time as the suit is disposed of. It is made clear that I have not expressed any opinion regarding the merits of the rival contentions.

(PIUS C.KURIAKOSE, JUDGE)

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